

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 26.08.2021

Pronounced on : 07.09.2021

+ CRL. M.C. 1732/2021 & CrI.M.A.12041/2021

GAURAV VIJ & ANR.

.....Petitioners

Through: Mr. Madhav Khurana, Mr. Piyush
Pahuja and Ms. Divya Thapliyal,
Adv.

Versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Manjeet Arya, APP with
Insp. Yogesh Bhatia,
Mr. Jai Sahai Endlaw, Adv. for
R-2, 3 and 4.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 13/2020, under Sections 498A/306/201 read with Section 34 of Indian Penal Code 1860, registered at Police Station- Prashant Vihar, Delhi, and all proceedings emanating therefrom.

CRL. M.C 1732/2021

Page 1 of 18

2. In brief the facts of the case are that on 12.02.2010, the marriage between the petitioner no.1 and Late Mrs. Prachi Vij was solemnized and on 18.03.2013, Master Kenit Vij was born out of the wedlock. On 31.12.2019, Late Mrs. Prachi Vij was found dead and a suicide note was recovered, wherein, allegations were levelled against the petitioners, namely, Gaurav Vij (husband) of deceased and Neeta Vij (mother-in-law) of deceased. On 02.01.20, postmortem was conducted, wherein, it was opined that the death of the deceased was caused due to combined effect of asphyxia and venous congestion on the neck as a result of anti-mortem ligature hanging. The impugned FIR had been registered pursuant to the complaint dated 10.01.2020, that was filed ten days after the death of Late Mrs. Prachi Vij, by Respondent no. 2 (sister) of the deceased against the petitioners, under the belief that the petitioner no. 1 (husband) of deceased and petitioner no. 2 (mother-in-law) of deceased had subjected the deceased to mental and physical torture, thereby, instigating her to commit suicide. Consequently, during the pendency of the trial, the parties have settled the matter amicably in terms of the MOU/Settlement Deed dated 25.01.2021. Copy of the said settlement is placed on record.

3. Ld. counsel for the petitioners submitted that settlement has been arrived in this matter between the parties. The offence originally was registered in FIR No. 13/2020 under Sections 498A/306/34 IPC. Subsequently, the charge sheet came to be filed wherein Section 201 IPC was added and in the supplementary charge sheet Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 was also added. Pursuant to the reconciliation between the parties and primarily in interest of

CRL. M.C 1732/2021

minor child, the settlement was arrived. Ld. counsel for the petitioners further submitted that the suicide was committed nearly ten years after the marriage. The cognizance has been taken, summons issued but the matter has not proceeded any further. It is also submitted that the connected FIR No. 464/20 under Sections 420/467/471 IPC was quashed between same parties owing to the settlement deed dated 25.01.2021 by the Court of H.M.J. Suresh Kait on 13.05.2021.

4. Ld. counsel for petitioners also submitted that a few observations which can be drawn from the suicide note of the deceased are that this was a marriage of nearly a decade, there is no specific incident of harassment or of any such harassment which would have led her to commit suicide, no specific date or time is given and the admitted case of prosecution is that both husband and wife had been consulting a marriage counsellor and psychiatrist.

5. He further submitted that the complainant has placed printout of conversation of deceased and Ravikunj, friend of petitioner no. 1, wherein, deceased talked about harassment by petitioner no. 1 and also, produced video footage wherein, petitioner No.1 seems to be coming out of crime scene with heavy articles in his hand showing that he is trying to destruct evidence. However, the admitted case being that post 25.12.2019, petitioner no.1 was residing with his mother/petitioner no.2, who resides in same compound but in a different flat. On the day of the incident, he was not residing with deceased since last five days and when he came to the house, he discovered that his wife Late Mrs. Prachi Vij had hung herself and

committed suicide. Clothes of deceased were recovered, means by which she committed suicide was also recovered. What these heavy articles are is not mentioned anywhere and is simply an assumption that something is being taken out of the house, hence, the offence under Section 201 IPC is committed.

6. He further submitted that it is alleged that from investigation and perusal of CCTV footage, it shows that petitioner no. 1 tried to destruct evidence and that the petitioner no. 1 had called his mother to crime scene before reporting to police. Hence, section 201 IPC was invoked. Ld. counsel for petitioners also submitted that with reference to the handwritten note of deceased, this was a bone of contention too between the parties and a cause of concern for the petitioner no. 1 as it seems that some sort of black magic was being done by the deceased. He further submitted that the deceased was made a shareholder by petitioner no. 1 in his company. A salary was being deposited in her account every month. From one proprietorship of petitioner no. 1, the deceased was being given one lac every month for her personal expenses out of this proprietorship, three credit card statements are also placed on record, various photographs of holidays taken by deceased and petitioner no. 1 are also placed on record showing that deceased was leading a happy and sound life.

7. Ld. counsel for petitioners submitted that the petitioner no. 1 initiated a dialogue with complainant and requested to meet with them to explain the true circumstances which lead to Late Mrs. Prachi Vij's death. Moreover, petitioners expressed keen interest towards Master Kenit Vij as they were

worried about his emotional and physical well-being. Petitioner no. 1 specifically pleaded with complainant that Master Kenit Vij having recently lost his mother needed love, care and protection of his father. Petitioner No. 1 out of his own accord offered to keep, maintain and provide care and support for Master Kenit Vij. Thereafter, the complainant and family of deceased realized that looking the young age and future prospects of Master Kenit Vij, it would be in best interest of both parties, who are maternal and paternal family of Master Kenit Vij to resolve their misunderstanding and end their disputes, so, that they can maintain a cordial and healthy relationship with each other. Specially, for the benefit and interest of Master Kenit Vij. The complainant and her family conveyed to petitioners that they are now aware of the true facts and circumstances that lead to death of Late Mrs. Prachi Vij and believe that petitioners are innocent and not responsible for her death. Consequently, settlement dated 25.01.2021 was arrived in interest of Master Kenit Vij.

8. It is further submitted by the Ld. counsel for the petitioners that in order to attract the abatement U/s 306 IPC, the necessary ingredients contained in Section 107 IPC have to be proved and if the provisions of Section 107 IPC are not satisfied, no case can be said to have been made U/s 306 IPC.

9. The relevant Sections are Sections 306 IPC and Section 107 IPC which are reproduced hereinbelow:

“Section 306 IPC – abatement of suicide. If any
person commits suicide, whoever abets the

commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

Section 107. abatement of thing – A person abets the doing of a thing who;

Firstly, instigates any person to do that thing or Secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing or Thirdly, intentionally aids by any act or illegal omission the doing of that thing.

Explanation: 1. A person who by willful misrepresentation or by willful concealment of a material fact which he is bound to disclose voluntarily causes or procures, or attempts to cause or procure a thing to be done is said to instigate the doing of that thing.”

10. In addition to what has been submitted by the Ld. counsel for the petitioners, it is further submitted that none of the provisions of the aforesaid Section are attracted in the instant case. He has submitted that there is no

instigation, no intentional aid or illegal omission on the part of the petitioners.

11. What is the meaning of the word “instigation” in view of the provisions of the above mentioned Sections has been defined in the following judgments:

“In the case of *Cyriac and another v. The SI of Police, 2005 (4) RCR (Criminal) 525*, Hon'ble High Court, in para 7 of the judgment held as under:-

7. As per clause 'firstly' in Section 107 IPC, a person can be said to have abetted in doing of a thing if he 'instigates' any person to do that thing. But, when can a person be said to have 'instigated' another to do an act? What is meant by the expression, 'instigate'? The word 'instigate' is not specifically defined in IPC. As per Oxford Dictionary 'instigate' means 'to goad or urge forward, to provoke, incite, urge, encourage to do an act.’ The meaning of the word 'instigate' was considered by Supreme Court also. In *Ramesh Kumar v State of Chhatisgarh 2001(4) RCR (Crl.) 537 (SC) JT 2001 (8) SC 569*, a decision cited by learned counsel appearing for petitioners, Supreme Court held “instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. As per another decision cited by counsel for petitioners in *Ved Paraksh v State of MP (1995 Crl. L J 893)*, the word 'instigate' means 'to goad

or urge forward to provoke, incite, urge, encourage to do an act.'

12. In view the above noted interpretation of the abatement, none of the provisions of Section 107 IPC which could make out a case under Section 306 IPC have been attracted in the present case.

13. In *Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh 2002 (2) RCR(Criminal) 687*, Hon'ble Supreme Court, while relying on the various judgments of the Apex Court held that the deceased committed suicide on the third day of the quarrel after the accused told him to commit suicide cannot be held that the suicide was direct result of quarrel. There was enough time to the deceased to think over and reflect. While coming to the said conclusion, reliance was placed on the judgment rendered by the Apex Court in the case of *Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618* as under:-

“7. Section 107 I.P.C defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.”

12. In *Ramesh Kumar v State of Chhattisgarh* (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstance individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

14. The present FIR was registered on the basis of the complaint made by Priyanka Tushar who is the sister of the deceased. The contents of her complaint as mentioned in the FIR are as follows:

“I Priyanka Tushar W/o Tushar Kumar R/o 27/7 Bijwasan Road, Kapashera, New Delhi age 39 years Ph. 9899526661. My sister Prachi who is younger than me, was married on 12.02.10, the boy from whom she was married, his name is Gaurav Vij. After sometime of the marriage my sister Prachi used to keep telling about the behaviour of Gaurav and Neeta that these both do not do good behaviour with me and harassing me mentally and physically Many times Prachi wrote many E-mails to me and many letters to my father in which she showed her pain and they do beatings with me on every little issue, abuses me and both mother-son harass me and do mental torture. Prachi used to tell all these things to me and our mother (Usha Kapoor) on whatsapp Chat and phone. Prachi was not allowed to meet with the family and she was not allowed to come even on the festivals. Prachi also told me that her husband Gaurav has installed a Recording Software at the behest of her mother (Neeta). Garuav and Neeta have a habit of drinking alcohol daily and under the influence of alcohol they start waking me up in the midnight and beating. Many times Prachi also lodged complaint of domestic violence by calling at 100 number. Neeta Vij used to teach her son that she has not brought anything from her house and she has to live on our

bread and she will do the work by becoming our maid. There is no need to give her any expenses. 10-15 days ago Prachi told me on WhatsApp how the mother and son together have been abusing and harassing her since morning. Prachi also wrote that she wants to leave Gaurav and wants to go back to her parents. I am in shock due to death of my sister, my sister has faced lots of mental and physical problems. So I request you to register FIR on immediate basis.”

15. On 31.12.2019, late Mrs. Prachi Vij was found dead and during search of the room an undated suicide note was recovered from inside of a book laying over a stool in the bedroom, written by deceased Mrs. Prachi Vij. The perusal of the suicide note shows that allegations levelled against the petitioners, namely, Gaurav Vij/husband of deceased and Neeta Vij/mother-in-law of deceased, are that they have insulted, humiliated, disparaged, abused and tortured the deceased. The petitioners have on various occasions humiliated and insulted the parents of the deceased as well. Further, the deceased alleged that she was in a failed, abusive and violent marriage with Petitioner no. 1 and she can no longer take the mortification, degradation and abuse she is subjected to everyday in her matrimonial relationship.

16. So, from the perusal of the suicide note, it can be presumed that the allegations levelled in the suicide note are vague and general in nature. The reading of the suicide note clearly shows that the petitioners at no point of time instigated, provoked, enticed, goaded, inveigled or encouraged the

deceased with such an intention that she should commit suicide. In such matters, there must be a specific allegation that the accused persons had instigated or provoked the deceased to commit suicide or that the accused persons had in any manner whatsoever aided any act or illegal omission to bring out the suicide. Prima facie, it appears that even if the instances of harassment as narrated in the suicide note are taken at their face value, they simply appear to be a matrimonial discord and it cannot be anticipated that the petitioners intended or had knowledge that the deceased would commit suicide pursuant to this. The present case is not the one where the petitioners had by their acts or omissions or by a continuous course of conduct created such circumstances that the deceased was left with no option except to commit suicide, in which case, an instigation may have been inferred. Be as it may, the suicide note by the deceased is not capable of being viewed as a material for the offence under Section 306 of IPC.

17. In the case of *Amalendu Pal alias Jhantu v. State of West Bengal (Criminal Appeal No. 2091 of 2009 arising out of SLP (Crl.) No. 9483 of 2008, decided on 11.11.2009)* the Hon'ble Supreme Court held as follows:-

“22. The prosecution, however, heavily relies on the clause thirdly of Section 107 IPC because, according to the prosecution, the appellant by way of harassment and torturing the deceased at various point of time and by marrying said Anita for the second time without the permission and against the will of the deceased,

intentionally aided the commission of suicide by the deceased.

24. The perpetration of physical torture on the deceased on the day prior to the date of the incident which led the deceased to commit suicide is the prosecution case all through out. It is no where the case of the prosecution that the appellant had played any active role either in instigating or aiding the commission of suicide by the deceased for denying to accept Anita as the wife of the appellant. Anita, the second wife of the appellant was brought by the appellant to his house about three months prior to the date of the incident of suicide by the deceased and therefore, bringing of the second wife to the house by the appellant cannot be said to have either incited or facilitated the commission of suicide by the deceased. It is also not the case of the prosecution as disclosed from the evidence led which we have scrutinized very minutely. The aforesaid contention, in our considered opinion, is far fetched and is not established by the facts of the present case. After carefully assessing the evidence on record, we find that there is no direct evidence to show that the appellant had by his acts instigated or provoked the deceased to commit suicide and has not done any act which could be said to have facilitated the commission of suicide by the deceased.”

18. In the present case, there are no allegations in the complaint made by the sister of the deceased on the basis of which, the present FIR was registered as well as in the suicide note that the petitioners have instigated, provoked, incited, goaded or encouraged the sister of the complainant to commit suicide. Thus from the records of this case, the provisions contained in Section 107 IPC are not attracted in the present case. As such, no offence U/s 306 IPC is made out.

19. Here it is pertinent to mention that the parties in the present case have arrived at a compromise and the complainant (respondent No. 2 Priyanka Tushar) who is the elder sister of the deceased, respondent No. 3 Ashok Kapoor and respondent No. 4 Smt. Usha Kapoor who are the father and mother respectively of the deceased have filed their affidavits in this regard.

20. In *Kulwinder Singh and others vs. State of Punjab and another 2007(3) RCR (Criminal) 1052* it has been held that the compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of Cr.P.C is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is “finest hour of justice”. Disputes which have their genesis not only in matrimonial discord but others as well, such compromise deserves to be accepted. It is further held as under :-

“The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C which can affect the inherent power of this Court under Section 482.

Further, the same cannot be limited to matrimonial cases

alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C in order to prevent the abuse of law and to secure the ends of justice.”

21. In the case of *Madan Mohan Abbot vs. State of Punjab 2008 (4) S.C. Cases 582*, the Apex Court emphasized and advised as under:-

“We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.”

22. Hon'ble the Supreme Court in the case of *B.S. Joshi v. State of Haryana* reported as 2003(2) R.C.R. (Criminal) 888 while relying on the judgment titled as *Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [(1998) 5 SCC 749]*, that this Court with reference to Bhajan Lal' case observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formula to be followed by the court. Exercise of such power

would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary of exercise utmost care and caution while invoking such powers.

23. In *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. [(1998) 1 SCC 692]*, it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

24. In *Gurpreet Singh v State of Punjab and another (CRM M 35576 of 2009, decided on 20.01.2010)* the Court accepted the compromise and quashed the FIR under Section 306 IPC, by holding as under:-

“7. Keeping in view the ratio of law laid down in Kulwinder Singh's case (Supra) and applying the same to the facts and circumstances of the instant case, in my considered opinion, once the matter has been compromised by the parties, no useful purpose shall be served by proceeding with the prosecution, as that would amount to sheer wastage of the time of the Court;

harassment to the parties; and abuse of the process of Court. Even otherwise, the compromise is neither abhorrent to lawful composition of the society nor would it promote savagery.

8. In view of the above, the petition is accepted. Consequently, FIR No. 11 dated 02.02.2008 under Section 306 and 309 IPC P S Kurali, SAS Nagar and all the consequential proceedings arising therefrom are quashed.”

25. In the present case, as already observed hereinabove, respondent No. 2, 3 and 4 who are the sister, father and mother respectively of the deceased have filed their affidavits stating reasons for the compromise between the parties and the affidavits state that the primary interest is the wellbeing of the minor child namely master Kenit Vij who is aged around 8 years.

26. The compromise in the present case has been arrived at between the parties keeping in view the paramount wellbeing of the minor child, otherwise, the future scenario in the case would be, the parties would keep on litigating on one pretext or the other and they may also file petitions for taking the custody of the minor child and in the process, the most sufferer would be the minor child, while the parties would be settling their scores with each other. Since, the compromise has been arrived at between the parties, so it is best to avoid this type of scenario in future, so that the child who has lost his mother can at least live peacefully with his maternal family and paternal family and can enjoy the love and affection of both the world. However, no amount of love and affection can bring back

in his life the love and affection of his mother, which she would have bestowed upon him, if alive.

27. In the facts and circumstances of the present case, the prosecution's case in the trial is going to face a situation of a case of no evidence, in view of the compromise between the parties. I find that the present case is a fit case to exercise powers U/s 482 Cr.P.C and further even otherwise, if criminal proceedings are allowed to continue, no fruitful purpose is going to be served and the proceedings shall only result in wastage of judicial time and the same is not likely to result in conviction. Accordingly, the present petition is allowed and the FIR No. 013/2020 U/s 498-A/306/201 R/w Section 34 of IPC registered at P.S. Prashant Vihar, New Delhi and all the proceedings emanating therefrom shall stand quashed.

28. The present petition stands disposed of accordingly. All pending applications if any are also disposed of accordingly.

RAJNISH BHATNAGAR, J

SEPTEMBER 07, 2021

Sumant